



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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MGallagher

MEMORANDUM FOR NATIONAL DIRECTOR, COLLECTION FIELD OPERATIONS

FROM: Dennis M. Ferrara *Dennis M. Ferrara*  
Acting Assistant Chief Counsel (General Legal Services)

SUBJECT: Request for Opinion on Collection Quality Measurement System

This memorandum responds to your request for our opinion on whether the Collection Quality Measurement System measures contained in Review Table Two is consistent with Section 6231 of the Technical and Miscellaneous Revenue Act of 1988 ("TBOR") and Policy Statement P-1-20. You also asked that we review whether several measurements previously captured in Review Table One, but not continued in Review Table Two, could be used in Review Table Two consistent with the provisions of TBOR and P-1-20. Our opinion is based upon a review of your memorandum and its attachments as well as the numerous supplemental discussions between Mike Gallagher of our office and Brenda Beasley of your office in which Brenda explained in greater detail the various measurements and their business purposes.

CONCLUSION

As explained in greater detail below, we conclude that the measurements contained in Table Two are consistent with both TBOR and P-1-20 as these measurements are not "records of tax enforcement results" since they assess the quality of work contained in the sampled cases against the standards set forth in the Internal Revenue Manual or authoritative memoranda. Regarding Table One, however, we conclude that the highlighted measurements could violate either or both TBOR and P-1-20 because these measurements are "records of tax enforcement results" and as explained to us their use could reasonably suggest either production quotas or goals in the absence of clearly defined business reasons. [REDACTED]

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## DISCUSSION

### A. Background.

The purpose of the CQMS is to assess the quality of collection activities conducted nationally by reviewing a weekly sample of 30 closed collection cases from each of the districts and then providing the results to each region and district on a quarterly basis. The quality review is conducted by a staff of Collection Division employees located in San Francisco who evaluate the work done on individual cases for conformance with standards set forth in the Internal Revenue Manual or other authoritative memoranda.

This quality review data is then forwarded to each regional commissioner and district director for their use as a quality control measurement for their respective organizations. Its purpose, therefore, is only to provide a sample of performance measured against pre-established quality measurements, e.g. timeliness, completeness.

A regional commissioner receives quality control data on a regional basis representing the aggregate of all of the districts within his/her region. A district director receives only district data pertaining to his/her district - the data is not broken down below the district level. In turn, a district director may provide his division and/or branch chief with some or all of this district information. There is no established prohibition on the dissemination of this quality control data below the district director.

The Collection Division used the measurements contained in Table One from October 1, 1997 until March 30, 1998 when it was replaced by Table Two. The copy of Table One which you provided contains highlighted measurements which were deleted from its successor, Table Two. Similarly, the copy of Table Two which you provided contains highlighted measurements which are additional measurements not contained in its predecessor, Table One.

The question you posed to us is whether these measurements violate TBOR and/or Policy Statement P-1-20. Accordingly, each of those references is discussed below.

### B. Applicable References

TBOR provides as follows:

**(a) *IN GENERAL* - The Internal Revenue Service shall not use records of tax enforcement results -**

**(1) *To evaluate employees directly involved in collection activities and their immediate supervisors, or***

(2) *To impose or suggest production quotas or goals with respect to individuals described in clause (1).*

(b) **APPLICATION OF IRS POLICY STATEMENT** - *The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act) in a manner which does not violate subsection (a).*

(c) **CERTIFICATION** - *Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).*

(d) **EFFECTIVE DATE** - *The provisions of this section shall apply to evaluations conducted on or after January 1, 1989.*

The portion of P-1-20 applicable to your inquiry is the third paragraph which provides as follows:

**Tax enforcement results tabulations shall not be used to evaluate an enforcement officer or impose or suggest production quotas or goals.**

Records of tax enforcement results shall not be used to evaluate enforcement officers, appeals officers and reviewers, or impose or suggest production quotas or goals. This prohibition is necessary not only to protect employees from any adverse impact or quantitative goals, but also to protect taxpayers against possible inequities. In the discharge of his/her responsibilities, but subject to the above prohibition a manager may raise questions with an individual about the number of cases he/she has processed, the amount of time he/she has been spending on individual cases, or the kind of results he/she has been obtaining.

Both TBOR and P-1-20 provide that "records of tax enforcement results" shall not be used to evaluate specific classes of employees (under TBOR, those "directly involved in collection activities", and under P-1-20 those who are "enforcement officers, appeals officers or reviewers."), nor impose or suggest production quotas or goals. Thus, the first step in answering your question is a determination whether the measurements are "records of tax enforcement results."

### **C. Definition of Key Terms Used in Both TBOR and P-1-20.**

#### **1. Definition of the term "records of tax enforcement results"**

Although the applicable portions of both TBOR and P-1-20 use the same term - "record of tax enforcement results" - neither reference sets forth a definition for that term. Accordingly, we have reviewed numerous Commissioner memoranda associated with the creation and publication of Policy Statement P-1-20 and its predecessors as well as other documents (e.g. collective bargaining agreements) that have used or made reference to that term. Based upon that review, we have concluded that the best definition is as follows:

A "record of tax enforcement results" is a figure resulting from the recordation, accumulation, tabulation, or mathematical analysis that is directly related to producing a tax enforcement result.

#### **2. Definition of the term "tax enforcement result."**

We recognize that standing alone, this definition is not as meaningful as we would like since it contains another term - "tax enforcement result" - which is not easily and universally understood. Accordingly, our review of those same documents has resulted in the following definition of that term:

A "tax enforcement result" is an outcome produced by an employee exercising judgement with regard to determining tax liability or ability to pay.

For example, a revenue officer's decision to issue a levy to secure payment of a taxpayer's debt is a "tax enforcement result" while the aggregate of that revenue officer's collection efforts (or those of a group, branch, division, etc.) is a "record of tax enforcement results" - all of the levies issued by an individual revenue officer, group, branch, division, etc.

### **D. Review of Current Measures in CQMS.**

Our review of the standards contained in the current CQMS - Review Table Two - reveals that those measurements do not assess the product of an employee's exercise of judgement with regard to determining tax liability or ability to pay. Rather, each of the standards assesses a procedural or non-judgmental action of an employee - specifically, whether the employee complied with procedural and timeliness criteria including but not limited to providing information to the taxpayer on his/her rights. Thus, they do not meet the definition of "records of tax enforcement results" and are not within the scope of P-1-20 or TBOR.

The one standard which did cause some initial concern, however, was the standard entitled "Type of Disposition" which the CQMS defines as "How the case was closed by RO. Only disposition types are FP, CNC, or IA. Stand alone TDIs will not be reviewed. All other types of dispositions are not reviewable." The CQMS also states that this information is contained in the "Header".

In our view, Type of Disposition measures the product of an employee's exercise of judgement with regard to determining ability to pay and is, thus, a tax enforcement result. Brenda Beasley of your staff, however, explained that Type of Disposition is set forth in the header to reflect the different quality measurements which attach to each of the different dispositions, e.g. full pay, currently not collectible, and installment agreement. For example, the CQMS records information on the collection financial analysis (Adherence to Allowable Expenses) which applies to installment agreements and currently not collectible dispositions, but not to full pay dispositions. To this end, Brenda stated that each CQMS samples thirty (30) cases each week - ten (10) from each of the three types of disposition, e.g. installment agreement, currently not collectible, and full pay. Accordingly, we view the inclusion of "Type of Disposition" to be an essential element of the quality control measurements as it merely identifies which type of case is sampled.

Although an essential element of the quality control measurements, the Type of Disposition, standing alone, is a record of tax enforcement results. Thus, we also reviewed the Type of Disposition to determine if its use in the CQMS violates the prohibitions in P-1-20 and TBOR regarding the use of records of tax enforcement results to impose or suggest production quotas or goals.

As explained earlier, the CQMS samples thirty (30) cases - ten (10) from each Type of Disposition, e.g. installment agreement, currently not collectible, and full pay. As each Type of Disposition is sampled equally, none of the three types is treated preferentially. Based upon the explanation you provided, the business purpose to using this record of tax enforcement results is to identify to the reader the Type of Disposition which has been the subject of quality measures. Accordingly, the use of the measurement Type of Disposition is merely an identifying characteristic and does not impose or suggest a production quota or goal. To ensure that the inclusion of this data does not suggest a production quota or goal to the reader, we suggest that the table include a notation that the Type of Disposition is included for identification purposes only.

Based upon the foregoing, we conclude that the use of the measurements set forth in Review Table Two of the CQMS does not violate either P-1-20 or TBOR.

**E. Review of Measures Deleted from Review Table One.**

You also asked us to review whether the following measures deleted from Review Table One and not currently measured by the Collection Division would violate P-1-20 or TBOR if the Collection Division resumed using these measurements in Review Table Two:

<b>Standard</b>	<b>Definition</b>	<b>Response</b>	<b>Purpose</b>
<b>Aggregate assessed liability at assignment to Cff.</b>	<b>Outstanding liability of all TDAs on date assigned RO. This may be determined from RO initial analysis of case. Not systemically retained on ICS once case is closed.</b>	<b>\$\$\$</b>	<b>Timeliness</b>
<b>Date first dollars collected</b>	<b>Date RO secures first payment from the TP.</b>	<b>MM/DD/YYYY</b>	<b>Timeliness</b>
<b>Dollars secured</b>	<b>Total dollars collected by RO prior to disposition</b>	<b>\$\$\$</b>	<b>Effectiveness</b>
<b>Number of tax returns secured with dollars</b>	<b>Number of tax returns secured by RO with payment. This excludes pre-paid credits.</b>	<b>##</b>	<b>Effectiveness</b>

These standards are records of tax enforcement results as they measure the product of the exercise of judgement in regard to determining ability to pay. Unlike the measures set forth in Review Table Two, each of these measures deleted from Review Table One do not evaluate the "quality" of a revenue officer's application of his/her elements and standards. Rather, they measure the production results of revenue officers. Thus, as a threshold matter, we do not believe that these measures can be characterized as "quality" measurements.

As these measures are records of tax enforcement results, both P-1-20 and TBOR apply. They provide that the records of tax enforcement results (1) may not be used to evaluate those employees directly involved in collection activity - the revenue officers from whose closed cases this information is derived - and their immediate supervisors<sup>1</sup>; and (2) that they may not be used to impose or suggest production quotas or goals upon such employees.<sup>2</sup>

Regarding the first prohibition, it does not appear that the measurements are used to evaluate employees directly involved in collection activity since the data collected does not even identify the revenue officer. However, the measurements in Review Table One do identify the group, so we are concerned about whether this information could be used to evaluate immediate supervisors of revenue officers. As this data is not distributed below the division level and is limited to thirty (30) cases per week per district, we think it is unlikely that the data would be used to evaluate group managers. To this end, Brenda has advised that the CQMS itself states that the data is not statistically valid below the district level. [REDACTED]

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P-1-20 provides broader scope of its prohibition than TBOR. TBOR extends its prohibition only to those employees directly involved in collection activities and their immediate supervisors, while P-1-20 extends to a broader group of employees - enforcement officers, appeals officers and reviewers. As the measures under review refer only to revenue officers, this opinion restricts its response to this narrower class of employees.

<sup>2</sup>

Although TBOR limits its restriction on the imposition or suggestion of production quotas or goals to those employees directly involved in collection activity and their immediate supervisors, P-1-20 has no such restriction. As the subject of your inquiry seeks an opinion only with respect to the measures contained in Review Table One, this opinion need not consider employees other than revenue officers - a class of employee directly involved in collection activity.

Regarding the second prohibition, these measurements pose a grave risk that they could be viewed as either imposing or suggesting production quotas or goals. Certainly the concern is less that the publication of these measurements to district directors and division chiefs would impose production quotas or goals upon them. In our view, the term "impose" as used in both P-1-20 and TBOR means a mandatory requirement of a certain level of performance. Our review of the tables reflects that such a mandatory purpose is missing.

Our greater concern, therefore, is that the publication of these measurements suggest a production quota or goal. To this end, we note that the business purpose set forth for most of these measurements is "effectiveness." We conclude that determining a district's or division's effectiveness upon the product of a revenue officer's exercise of judgement in regard to determining ability to pay suggests a production quota or goal since the essence of this purpose is that the proper measurement of a district's effectiveness is the quantified aggregate of the results from those judgements - e.g. the amount of dollars secured or the quickness with which the dollars were secured and the case is closed. Delivering that message in the context of a "quality" assessment does not change the character of the message - that effectiveness is determined by the end result of dollars collected or secured. P-1-20 and TBOR support the effective and efficient administration of the tax system by ensuring that the deliberative process of employees who exercise judgement in regard to a taxpayer's tax liability or ability to pay is free from the influence of statistics which measure the results of those employee judgements.

Based upon the foregoing, we conclude that the Collection Division should continue its practice of deleting from the CQMS the following standards: aggregate assessed liability at assignment to CFF; date first dollars collected; dollars secured; and number of tax returns secured with dollars.

Should you wish to discuss this matter further, please contact Mike Gallagher at 401-4035.